



SERVICE OF PROCEEDINGS IN LOCKDOWN

We are starting to see a number of cases coming through the English courts dealing with procedural issues caused by Covid-19. The latest of which addresses the issue of service of proceedings on a business premises during lockdown, and gives a clear message that the court will not permit parties to take advantage of the pandemic.

In Stanley v London Borough of Tower Hamlets [2020] EWHC 1622 (QB)¹, the High Court overturned a default judgment (obtained when there is a failure to file an acknowledgement of service/defence) on the basis that the claim form should not have been served at an address known to be closed as a result of Covid-19 – the particulars of claim were served on a local authority by post two days after the country went into “lockdown”.

The court found that even though the local authority had confirmed it would accept service by post at its offices, the claimant’s lawyer should have checked the position once lockdown had been announced, as it was clear that the circumstances had changed and it was foreseeable that the office would be closed.

The judgment also looked at the (CPR 13.3) test for over-turning a judgment in default, and found that:

1. there were good prospects of success; and also
2. there was a good reason to set-aside the judgment- namely that Covid-19 had caused the “*world to shift on its axis*”, and the claimant’s lawyer should have adopted a responsible course of action as befitting an officer of the court and confirmed the method of service with the local authority.

In addition, the court granted the local authority:

- **relief from sanctions** for its failure to file an acknowledgement of service and a defence, taking into account the Denton/Mitchell tests in CPR3.9, but also the (Extension of time limits and clarification of Practice Direction 51Y – coronavirus) Practice Direction PD 51ZA para4, which provides that:

“4. In so far as compatible with the proper administration of justice, the court will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions, the adjournment of hearings, and applications for relief from sanctions.”

- **its costs**, which looks to be in recognition of the court’s criticisms of the way in which the claimant’s lawyers approached service.

What can parties take from this case?

- This case shows that the court will be reluctant to support parties who try to take procedural advantage from the pandemic.
- Parties may wish to 1) actively monitor any address given for service, as there are no guarantees that judgment in default will always follow - each case will be looked at based on its own circumstances, and/or 2) seek to agree an alternative place, or method of service (e.g. agreeing service by email).

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¹ <https://www.bailii.org/ew/cases/EWHC/QB/2020/1622.html>

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